SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 20 1968
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. 323

PETE a.k.a. PETER RECZNIK,
Petitioner,

vs.

THE CITY OF LORAIN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Court of Appeals, Ninth Judicial District of Ohio.

MEYER GORDON,
GORDON & GORDON,
309 Broadway Building,
Lorain, Ohio 44052,
Attorneys for Petitioner.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

TABLE OF CONTENTS.

Opinions of the Courts Below ____ 2

Statement of the Grounds on Which the Jurisdiction of This Court Is Invoked ____ 2

Questions Presented ____ 3

Constitutional and Statutory Provisions Which the Case Involves ____ 3

Manner in Which the Federal Question Sought to Be Reviewed Was Raised ____ 5

Statement of the Case ____ 5

Arguments Relied on For Allowance of the Writ ____ 8

Conclusion ____ 12

Appendices:

A. Order of the Supreme Court of the State of Ohio Denying Rehearing, May 8, 1968 ____ 13

B. Orders of the Supreme Court of the State of Ohio ____ 13

C. Opinion of the Court of Appeals ____ 14

D. Journal Entry of the Court of Appeals ____ 15

E. Opinion of the Court of Common Pleas ____ 16

F. Journal Entry of the Court of Common Pleas ____ 16

G. Journal Entry of the Municipal Court of Lorain ____ 18

H. Opinion on Motion to Suppress in the Municipal Court of Lorain ____ 19

I. Motion for Rehearing on Motion to Suppress Evidence and Affidavit, Municipal Court of Lorain, Ohio ____ 20

TABLE OF AUTHORITIES.

Cases.

Beck v. Ohio, 379 U. S. 89, 85 S. Ct. 223 (1964) ____ 10

Bock v. City of Cincinnati, 43 Ohio App. 257 (1931) 9

Columbus, City of, v. Holmes, 107 Ohio App. 391, 152 N. E. 2d 301 (1958), affirmed 169 Ohio St. 251 9

Huth v. Woodard, 108 Ohio App. 135 (1958) ____ 9

Johnson v. U. S., 333 U. S. 10, 92 L. Ed. 436 ____ 10

Lakewood v. Smith, 1 Ohio St. 2d 128 (1965) ____ 8, 9

Mapp v. Ohio, 367 U. S. 643, 6 L. Ed. 2d 1081 (1961) 8

McDonald v. United States, 335 U. S. 451, 69 S. Ct. 191 (1948) ____ 8, 9, 10

People v. Lund, 271 N. Y. S. 2d 164 (1966) ____ 8

Constitution.

Constitution of the United States:

Fourth Amendment ____ 3, 8

Fourteenth Amendment ____ 3, 8

Statutes.

Codified Ordinances of the City of Lorain, Ohio:

Sec. 513.01 ____ 2, 4

Sec. 513.03 ____ 2, 4

Sec. 513.07 ____ 2

28 U. S. C. 1257(3) ____ 2

In the Supreme Court of the United States

OCTOBER TERM, 1968.

No. _____.

PETE a.k.a. PETER RECZNIK,

Petitioner,

vs.

THE CITY OF LORAIN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the Court of Appeals, Ninth Judicial District of Ohio.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner, Peter Recznik, prays that a writ of certiorari issue to review the judgment of the Court of Appeals, Ninth Judicial District of Ohio, made and entered by said court on November 7, 1967 (a copy of which is attached hereto as Appendix D).

The Ohio Supreme Court refused further appellate review on May 6, 1968, thus making the judgment of the Court of Appeals final on that date. Copies of the various entries made by the Ohio Supreme Court are attached hereto as Appendices A and B.

OPINIONS OF THE COURTS BELOW.

The opinions of the lower courts were not reported.

Petitioner's case was heard first in the Lorain Municipal Court, Lorain County, Ohio. All three (3) counts (violations of city ordinances 513.01, 513.03, and 513.07) in Cases No. 109175 and No. 109285 were heard together. Before trial, the Court denied on all counts Petitioner's Motion to Suppress evidence seized (Appendix H). A further Motion for Rehearing on Motion to Suppress Evidence was also denied by the court (Appendix I) during the course of trial. The case was submitted to the jury and the Petitioner was found guilty on all three (3) counts. Petitioner's Motion for New Trial was also denied by this Court (Appendix G).

Petitioner appealed to the Court of Common Pleas of Lorain County, Ohio, Case No. 70057. The opinion of the municipal court below was affirmed on the first two counts but reversed on the third (Appendices E and F).

Petitioner then appealed to the Court of Appeals for Lorain County, Case No. 1764, but the opinion of the Court of Common Pleas was affirmed (Appendices C and D).

Motion to Certify in the Supreme Court of Ohio was denied. Petitioner's final Motion for Rehearing was similarly denied (Appendices A and B).

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The judgment of affirmance by the Supreme Court of Ohio was entered May 6, 1968; hence, the petition herein being filed within ninety days of May 6, 1968, the jurisdiction of this Court is invoked under 28 U. S. C. paragraph 1257(3) since "rights, privileges and immunities" under the United States Constitution are claimed to have been violated.

QUESTIONS PRESENTED.

(1) May a police officer enter a private apartment without a search or arrest warrant, obtain evidence of gambling and then make an arrest, where he trespasses upon the premises in violation of defendant's constitutional rights secured by the Fourth and Fourteenth Amendments to the Constitution of the United States?

(2) May a police officer enter a private apartment when no misdemeanor had been committed in the presence of the officer, make an arrest *after* entering the premises and seeing a dice game, which fact was disputed, confiscate gambling devices and use the same in evidence against the defendant?

(3) Is it prejudicial error to permit contraband to be admitted in evidence and shown to the jury which contraband was suppressed on appeal by the Common Pleas Court but permitted by the trial court to be displayed to the jury during the course of the trial?

CONSTITUTIONAL AND STATUTORY PROVISIONS WHICH THE CASE INVOLVES.

Constitution of the United States:

Amendment XIV, Section 1, Clause 2:

"* * * nor shall any State deprive any person of life, liberty, or property without due process of law * * *."

Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Codified Ordinances of the City of Lorain, Ohio:

Section 513.01:

"No person shall keep a room, building, harbor, booth, shed, tenement, canal boat, or other water craft, to be used or occupied for gambling, or knowingly permit it to be so used or occupied, or being the owners thereof rent it to be so used or occupied. An owner of such building, tenement, or water craft knowing that a device is used or kept therein for gambling, who does not forthwith make complaint against the person so using or keeping it has knowingly permitted to be used and occupied for such purpose."

Section 513.03:

"No person shall keep, maintain or exhibit for gain or to win money or other property, or cause or permit to be so kept, maintained or exhibited a gambling table, or faro or keno bank, or a gambling device or machine, or a billiard table for the purpose of gambling or allow it to be so used, or a slot machine or pinball machine, or any machine, device or instrument which may be operated by the use of any coin, token, slug or disc, whether such machine, device or instrument purports to vend or distribute merchandise, or to furnish recreation or amusement, if such machine, device or instrument when so operated, returns or distributes more or less merchandise than it purports to return or distribute, or returns or distributes one or more coins, slugs, tokens or discs, or tabulates a score, number or make which may be used for obtaining merchandise or other articles of value."

MANNER IN WHICH THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS RAISED.

Prior to trial, petitioner moved to suppress illegally acquired evidence, which effort was renewed by filing an Application for Rehearing and during the course of the trial. Each of the violations of the petitioner's constitutional rights was seasonably presented in the Municipal Court, the Court of Appeals and the Supreme Court of Ohio.

STATEMENT OF THE CASE.

The Petitioner, Peter Recznik, was the owner of property located at *1420* and *1422* Broadway, Lorain, Ohio. The premises consist of two separate units, with separate entrances and with no connection between them. 1420 is a downstairs storeroom with a basement and a front and rear entrace and was used as a cigar store. It was dark and closed at the time in question. 1422 Broadway is an upstairs suite consisting of five rooms and bath and was occupied as living quarters, at the time in question, by John Micjan.

On June 10, 1965, at about 1:00 A.M., there was a party with a number of people in the upstairs suite. Officer Kochan, assigned to patrol the north end of the city and not the area of 1422 Broadway, on his own initiative, went to the locality of the Recznik property. He stated he had information from an unidentified informant, without stating that the informant was reliable (R. 48), and went to the location of the Recznik property, near an all-night restaurant (R. 106, R. 107), where he observed many cars around the building (R. 8) and two men enter the apartment by the rear stairway.

Officer Kochan asked the Petitioner, who was at the rear of the building, what was happening; Petitioner re-

plied: "a party." The officer then stated he would be back in a half-hour.

Officer Kochan, accompanied by Officer Kienzle, returned in a half-hour and, without a search warrant or a warrant for arrest, went up the back stairway. They tried to look through the window, did not see anything, but only heard voices (R. 10). The officers had no evidence to make an arrest *before* entering the premises (R. 60, lines 8 through 19).

Officer Kochan then pulled open the back screen door which was latched on the inside and entered the premises. He stated that Recznik was at this back door. The officers immediately observed a number of people standing, eating, drinking coffee and playing cards.

The back room, or kitchen, was separated from the front room by an intermediate room. Officer Kochan stated that, as he was going to the front room, Recznik said that you can't go in there. Kochan continued through other various rooms and claimed that he then saw Recznik leave the door to the front room from the intermediate room ajar about 12 or 13 inches. Through this small opening Kochan stated that he observed dice gambling in the front room and consequently ordered everyone under arrest. Officer Kienzle, who accompanied Officer Kochan, stated that he saw *no gambling* (R. 113) and that the Petitioner, Recznik, was standing in the back room (kitchen) and did not leave that room (R. 109, 111, 113).

Thereafter, the officers went to a side room, found a duffle bag and poured the contents of the bag which contained chips and dice onto a dice table located in the front room. A newspaperman appeared and took a picture of the table upon which the contents of the duffle bag had been poured. This picture was printed in the daily paper

and was introduced to the jury but was not a true picture of the front room when Officer Kochan first entered (R. 180, 181).

The officers took the dice, chips and table to the police station. After the petitioner had been taken to the station, a further search found a number of keys. With one of these keys, the officers opened the downstairs storeroom where there was no evidence of any activity and found 16 boxes of old punch and tip boards in the basement (R. 121). Neither of the officers, at any time, had a search warrant, nor were they in pursuit of making an arrest nor were they given permission to enter.

In the municipal court, a timely Motion to Suppress the Evidence was filed. The motion was overruled. Thereupon, a Motion for a Rehearing to Suppress Evidence with an Affidavit of Recznik was filed. It was agreed by the prosecuting attorney and municipal court that the evidence in the main case would be considered by the court on the question of the Motion to Suppress Evidence during the course of the trial. The court overruled the rehearing on the Motion to Suppress Evidence and permitted the introduction of all the gambling equipment into the evidence. The case was submitted to the jury who found the petitioner guilty on all three counts.

On appeal to the Common Pleas Court, the court sustained the Motion to Suppress as to the third count in case No. 109285, Municipal Court, but affirmed the judgment of the Lorain Municipal Court on the first two counts convicting Recznik for keeping a place for gambling and exhibiting gambling devices, misdemeanors under the City Ordinances. The Court of Appeals affirmed the Common Pleas Court. The Supreme Court of Ohio refused to review on the Motion to Certify and the Application for Rehearing was denied.

Pursuant to Ohio law, therefore, the decision of the Court of Appeals of the Ninth District of Ohio became the judgment of the highest court of the state in which a decision could be had.

ARGUMENTS RELIED ON FOR ALLOWANCE OF THE WRIT.

The Petitioner maintains that the decisions of the lower courts sustaining the convictions have violated his constitutional rights as secured by the Fourth and Fourteenth Amendments to the Constitution of the United States for the following reasons:

There was illegal entry into the apartment without a search or arrest warrant and the fruits of this illegal entry should have been excluded from the evidence, under the exclusionary rule laid down by this Court in the case of *Mapp v. Ohio,* 367 U. S. 643, 6 L. Ed. 2d 1081 (1961). Likewise, see the cases of *People v. Lund,* 271 N. Y. S. 2d 164 (1966), and *McDonald v. United States,* 335 U. S. 451, 69 S. Ct. 191 (1948).

There was "unreasonable" search and seizure in the case at bar since the entrace to the apartment was made neither with a search or arrest warrant nor in pursuit to make an arrest. The entrance of the officers was a trespass. There was no permission for the officers to enter the apartment nor was there any consent given to the officers to make a search of the apartment. The fact that the officers went in without resistance does not give consent. *Lakewood v. Smith,* 1 Ohio St. 2d 128 (1965).

The instant case involves an apartment or living quarters and the courts have held that, except in emergencies, it will not sustain a search of a private dwelling or apartment without obtaining a search warrant. The

dominant theme involving a permanent home is the protection of the right of privacy.

The lower courts seem to indicate the apartment was open to the public but this conclusion was not fact since the upstairs apartment was a private dwelling of John Micjan. An officer may seize and use what he sees in plain sight or hears—if he is *lawfully* where he is, but *not if he is committing a trespass. Lakewood v. Smith,* 1 Ohio St. 2d 128 (1965). The search at its commencement must be valid and cannot be justified by what it produces; furthermore, an arrest cannot be justified by the fruit of an illegal search under the fruit of the poisoned tree doctrine. *McDonald v. United States,* 335 U. S. 451, 69 S. Ct. 191 (1948).

The arrest was for a misdemeanor and Ohio cases have held that a misdemeanor must be committed in the presence of the arresting officer to make an arrest valid. In *City of Columbus v. Holmes,* 107 Ohio App. 391, 152 N. E. 2d 301 (1958), affirmed 169 Ohio St. 251, the court states:

> "1. Where no misdemeanor is committed in the presence of a police officer there is no authority to make an arrest, on a mere suspicion or belief that a misdemeanor has been committed, without a warrant."

See, also *Huth v. Woodard,* 108 Ohio App. 135 (1958); *Bock v. City of Cincinnati,* 43 Ohio App. 257 (1931).

In this connection, we maintain that there was no misdemeanor being committed in the presence of an officer *before* he entered the apartment (R. 60). Officer Kochan was so intent on making the arrest that he claimed he saw gambling but this was *after he entered the apartment.* Officer Kochan contends that he saw petitioner come out

of the front room and that he looked over him and saw gambling. This was contradicted by Officer Kienzle who states on pages 109, 111 and 113 of the Record to the effect that he saw Recznik by the inner door of the kitchen when Officer Kochan went into the front room, that Recznik remained in the kitchen and that, although he saw cards on the table in the front room, he saw no money and therefore this did not constitute gambling.

We strongly maintain further that the officers had ample opportunity to obtain a search warrant and that without such warrant, the police had no right to make an entry into the upstairs suite. *Johnson v. U. S.*, 333 U. S. 10, 92 L. Ed. 436. Inconvenience and delay are not enough. No fleeing suspect, moving vehicle nor contraband was threatened to be removed. *McDonald v. United States*, 335 U. S. 451, 69 S. Ct. 191 at page 193 (1948). The case of *Beck v. Ohio*, 379 U. S. 89, 85 S. Ct. 223 (1964), spells out specifically that an officer must obtain a search warrant. Justice Stewart, the Ohio member of this Court, reversed all the lower courts in Ohio which had found defendant guilty. The Court held:

> "An arrest without a warrant by-passes the safeguard provided by an objective predetermination of probable cause, and substitutes instead the far less reliable procedure of an after-the-event justification for the arrest or search, too likely to be subtly influenced by the familiar shortcomings of hindsight judgment; but whether or not the requirements of reliability and particularly of the information on which an officer may act are more stringent where an arrest warrant is absent, they cannot be less stringent than where an arrest warrant is obtained."

In the case of *McDonald v. United States, supra,* the arrest was also made without a search warrant. While

outside the house, an officer thought he heard an adding machine and entered the premises and saw evidence of gambling. Conviction by the lower court was reversed by the Supreme Court of the United States. Mr. Justice Jackson noted at page 195 in his concurring opinion:

> "While the enterprise of parting fools from their money by the 'numbers' lottery is one that ought to be suppressed, I do not think its suppression is more important to society than the security of the people against unreasonable searches and seizures. When an officer undertakes to act as his own magistrate, he ought to be in a position to justify it by pointing to some real immediate and serious consequences if he postponed action to get a warrant."

In the case at bar, we claim that the evidence is stronger than the above in that the officers had no right to enter the apartment which was at 1422 Broadway. It is to be noted that 1422 Broadway is the upstairs suite occupied as living quarters. The downstairs, which is 1420 Broadway, was a storeroom in which there was no one present and yet, the affidavit of arrest and charge claimed the offense took place at 1420 Broadway. Even if a search warrant had been obtained, it would have been invalid by reason of the wrong address.

Finally, the Petitioner did not receive a fair trial in that the municipal court permitted evidence to be introduced concerning the third charge which made an improper showing by displaying 16 boxes of tip boards during the trial so that it could prejudice the jury. The totality of the circumstances by virtue of permitting these exhibits, which were suppressed by the Common Pleas Court, to be in the courtroom during the entire trial prejudiced and prejudged this petitioner. This was error in permitting the unlawfully seized evidence, especially the punch and tip

boards under the third charge (which was reversed), in the courtroom during the *entire* trial and prevented the petitioner from having a fair trial.

CONCLUSION.

The petitioner contends that the police officers entered the apartment without a warrant, claimed they saw a dice game, confiscated gambling devices and then used the evidence seized against this petitioner. Petitioner maintains that, since the officers saw no misdemeanor committed, they had no right to enter the apartment without a warrant, that the fruits of the illegal search should have been excluded from the evidence and that the Motion to Suppress should have been sustained.

Petitioner earnestly urges that this Court grant certiorari to review his cause.

Respectfully submitted,

MEYER GORDON,
GORDON & GORDON,
Attorneys for Petitioner.

APPENDIX A.

Order of the Supreme Court of the State of Ohio Denying Rehearing, May 8, 1968.

It is ordered by the Court that rehearing in this case is denied.

APPENDIX B.

Orders of the Supreme Court of the State of Ohio.

ORDER DISMISSING APPEAL.

This cause, here on appeal as of right from the Court of Appeals for Lorain County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Municipal Court of Lorain to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Lorain County for entry.

ORDER OVERRULING MOTION TO CERTIFY RECORD.

It is ordered by the Court that this motion is overruled.

APPENDIX C.

Opinion of the Court of Appeals.

(Decided Nov. 3, 1967.)

After a trial by jury, the defendant was convicted in the Municipal Court of the City of Lorain, for violation of city ordinances numbers 513.01 (keeping a place for gambling; 513.03 (exhibiting gambling devices); and 513.07 (possession or custody of numbers game).

The defendant appealed that judgment to the Court of Common Pleas of Lorain County; the judgment of the trial court as to the violation of ordinance number 513.07 was reversed; and the judgment of the trial court as to the violation of ordinances numbers 513.01 and 513.08 was affirmed.

An appeal on questions of law is lodged in this Court as to the two convictions. We have examined the bill of exceptions with extreme care, and, also, the numerous claimed errors with reference thereto. We do not deem it necessary to set out in full here all of the errors asserted by the defendant. The evidence established, beyond a reasonable doubt, the guilt of the defendant, Pete Recznik. There is no error in the record prejudicial to any substantial right of the defendant, and we determine that the judgment of the Court of Common Pleas must be affirmed.

Judgment affirmed.

APPENDIX D.

Journal Entry of the Court of Appeals.

(Entered Nov. 7, 1967.)

This cause came on to be heard on appeal on questions of law by the said Pete Recznik, Defendant-Appellant herein, the original papers or transcripts thereof, and a duly certified Transcript of the Docket and Journal Entries of the Court of Common Pleas of Lorain County, Ohio, filed therewith in the said City of Lorain, Plaintiff-Appellee and Pete Recznik, Defendant-Appellant, was argued by counsel.

Upon consideration whereof the Court finds that in the record and proceedings aforesaid there is no error manifest upon the face of the Record of said Court of Common Pleas, and the judgment of said Court of Common Pleas is affirmed.

It is ordered that the said Appellant pay the costs of this Proceeding taxed at $----------, and in default thereof that execution issue therefor.

The Court finds there was reasonable cause for this appeal.

It is further ordered, adjudged and decreed that the judgment of the Municipal Court in Case No. 109175 be and the same is hereby affirmed and the execution of judgment be suspended pending appeal. Bond heretofore posted by the Defendant-Appellant is continued. Exceptions to Peter Recznik, Defendant-Appellant.

APPENDIX E.

Opinion of the Court of Common Pleas.

This cause coming on to be heard on appeal from the Municipal Court, the Court on consideration thereof, affirms the lower Court on the first two (2) counts and reverses on the third count.

The search of the storeroom in this case was too remote in time to have been incidental to the arrest and therefore, search without warrant failed to meet the test of reasonableness under the 4th amendment rendering evidence obtained as a result thereof inadmissible.

The search must be contemporaneous with the arrest. Here the defendant was arrested and booked, and then the search took place on the third count.

Police officer's knowledge of accused's * * * previous record of arrests or convictions of themselves would not constitute probable cause. See *Beck vs. State of Ohio,* 3 (O. Misc.) 71, et al.

Exceptions.

See Journal.

APPENDIX F.

Journal Entry of the Court of Common Pleas.

(Entered Feb. 20, 1967.)

The said parties appeared by their attorneys and this cause came on to be heard upon the Notice of Appeal of Peter Recznik, defendant-appellant herein, together with the transcript of the docket and journal entries from the Municipal Court of Lorain, Lorain County, Ohio, and such

original papers or transcripts thereof, were necessary for said appeal, filed in said cause; wherein City of Lorain, plaintiff-appellee and Peter Recznik, defendant-appellant mentioned and referred to in said Notice of Appeal was argued by counsel.

Upon consideration whereof, the court finds that in the record and proceedings aforesaid, there is no error manifest upon the face of the Record of the said Court of Common Pleas affirming the judgment of the Municipal Court of Lorain for the first two charges involved in case No. 109175 in the Municipal Court of Lorain; but as to the third charge as set forth in Municipal Court of Lorain, Ohio, case No. 109285, there is error manifest upon the face of the Record to the prejudice of appellant, to-wit: that judgment should be rendered for the defendant, Peter Recznik, in the said third charge as set forth in the Municipal Court of Lorain case No. 109285, and therefore the judgment of the Municipal Court of Lorain as to the third charge or charges in case No. 109285 is set aside, reversed and held for naught and the defendant is released and discharged from the said charge and the fine and sentence is held for naught.

It is therefore considered, ordered and adjudged by this Court that the charge as to case No. 109285 filed in the Municipal Court of Lorain, Ohio, being the third charge argued in the Court of Common Pleas is set aside, reversed and held for naught at the costs of the City of Lorain.

It is further ordered, adjudged and decreed that the judgment of the Municipal Court in Case No. 109175 be and the same is hereby affirmed and the execution of judgment be suspended pending appeal. Bond heretofore posted by the defendant-appellant is continued, exceptions to both parties.

APPENDIX G.

Journal Entry of the Municipal Court of Lorain.

(Filed October 14, 1965.)

Defendant Pete Recznik in Court this date with Attorney Meyer Gordon for disposition of the Motion for a new trial filed by said defendant which was taken under advisement after an oral hearing and the filing of briefs in support of said motion. The Court upon consideration overrules the motion for a new trial. Defendant Pete Recznik was inquired of if he had anything to say why Judgment should not be imposed and Defendant having nothing further to say than he hath already said.

It is therefore the judgment of law and sentence of the Court that Defendant be assessed a fine of $500.00 and costs and 90 days in the City Jail with 75 days withheld pending probation to Inspector M. Mumford for a period of three years on the first count of Keeping a Place for Gambling, and be assessed a fine of $500.00 and costs and 90 days in the City Jail with 75 days withheld pending his probation on the second count of Exhibiting Gambling Devices. It is further ordered that all the devices, papers, dice tables, punch boards etc., used for the purpose of gambling are hereby ordered confiscated and destroyed. Defendant Pete Recznik, by his Attorney Meyer Gordon, gave notice of his intention to file an appeal herein, and on motion it is ordered that the imposition of the sentence and judgment herein against said defendant be withheld pending his appeal and upon a recognizance being given by the said Pete Recznik in the sum of $1850.00 with security to the approval of the Court Clerk conditioned that the defendant will appeal without delay and abide by the judgment and sentence of the Court. (See case No. 109285.)

Verdict filed Sept. 17th, 1965: Defendant, Guilty of Exhibiting Gambling Devices, contrary to City Ord. 513.08.

Verdict filed Sept. 17, 1965: Defendant, Guilty of Keeping Place for Gambling, contrary to City Ord. 513.01.

APPENDIX H.

Opinion on Motion to Suppress in the Municipal Court of Lorain.

(Filed July 7, 1965.)

This cause came on for hearing on a motion filed by the defendant Pete Recznik to suppress the evidence herein for the reason that an illegal search was made without a warrant and without having reasonable grounds. The Court upon consideration overrules defendant's motion for the following reasons, to-wit: That no evidence of any illegal search or seizure was presented. Defendant merely presented oral and written arguments in support of his motion. Furthermore the police officers upon investigation of complaints and observing unusual activity at a late hour at the place in question, entered this public establishment and observed gambling being conducted openly and in full view of the police officers. There was no evidence of force or illegal entry presented. The officers having observed a crime being committed were not required to look the other way or to disregard the evidence merely because they had no search warrant. Where the building in question is a public establishment, the police officers have a right to enter even if only to make a routine check. After the police officers observed

the gambling and arrested the proprieter and owner of the building, any search thereafter of the premises was incident to the arrest and therefore proper. The Court finds no violation or infringement of defendant's Constitutional rights as guaranteed by the fourth and fifth amendments. Exceptions.

APPENDIX I.

Motion for Rehearing on Motion to Suppress Evidence and Affidavit, Municipal Court of Lorain, Ohio.

Now comes Peter Recznik by Meyer Gordon, his attorney, and moves the court for a rehearing for the purpose of giving testimony and for the purpose of substantiating the affidavit hereto attached.

Your applicant prays that the said application for rehearing be granted for the reason that the overruling of the motion to suppress evidence by the court invades the constitutional rights of the defendant herein.